

1  
2  
3  
4  
5  
6  
7  
8 RAYMOND A. MIRRA, et al.,  
9 Plaintiffs,

10 v.  
11 FARELLA BRAUN + MARTEL, LLP,  
12 Defendant.

13 Case No.16-mc-80068-LB  
14

15 **ORDER ON SEALING &  
16 STATUS OF CERTAIN EXHIBITS**

17 The court has denied two sealing motions in this case: one by the petitioners and one by the  
18 “interested parties” who describe themselves as plaintiffs in the underlying Delaware suit. (*See*  
19 ECF Nos. 1, 11, 21, 46.)<sup>1</sup> The court denied both motions primarily because they inadequately  
20 explained why the target material could be kept from public access under Local Rule 79-5 and the  
21 governing standard of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).  
22 The interested parties’ submission also failed to fully comply with Local Rule 79-5(d)’s  
23 instructions about the form in which sealing material must be filed and submitted to court.

24  
25  
26  
27 <sup>1</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the  
28 ECF-generated page numbers at the top of documents.

1      **1. The petitioners**

2      The exhibits that the petitioners sought to seal — Exhibits 3, 4, 12, 15, 16, and 22 to the  
3      Beskin Declaration (*see* ECF No. 1 at 2) — are currently in a sort of limbo. They were not  
4      effectively filed as sealed exhibits; they were not filed on the open docket. There is, then, in a  
5      sense no usable version of this material before the court. After the court denied their sealing  
6      request, the petitioners did not file a new motion to seal. Nor had they e-filed the target exhibits  
7      (though they did manually file this material with the court). Presumably, the petitioners still mean  
8      to use this material in arguing their case.

9      The court asks the petitioners to explain how they want to proceed. Do they still want to seal  
10     the material? If they do, then a new sealing motion is needed. Among other things, the petitioners  
11     should e-file redacted and unredacted versions of their documents, which the petitioners can  
12     provisionally seal themselves on ECF until the court rules on the new motion. *See generally* Civil  
13     L.R. 79-5(a) (“‘file’ means . . . to electronically file . . . a document that is submitted by a  
14     registered e-filer in a case that is subject to e-filing”); 5-1(b) (“[S]ealed documents within unsealed  
15     cases shall be filed electronically . . . .”).

16     Do the petitioners instead want to simply file the material on the ECF docket — openly and  
17     publicly accessible? If they do, then they must e-file the material themselves. Because the exhibits  
18     were not e-filed, the court cannot directly manipulate them in ECF to open them to public access  
19     and so effectively re-file them for the petitioners.

20     Or do the petitioners not want to rely on these particular exhibits? That seems unlikely. But it  
21     is the petitioners’ case, after all, and, at least in theory, this is an option.

22  
23      **2. The interested parties**

24     The court similarly assumes that the interested parties will file a new sealing motion, properly  
25     supported and in compliance with Local Rule 79-5, or choose to file the target material on the  
26     open docket.

1       **3. General considerations**

2       The court encourages the parties to review the Ninth Circuit's decision in *Kamakana, supra*,  
3       particularly the discussion of sealing in connection with non-dispositive motions. *See Kamakana*,  
4       447 F.3d at 1178-80, 1185-87. The court would also ask the parties to review Local Rule 79-5 in  
5       all its glorious detail.

6       The court does not wish to insist on observing ministerial minutiae for their own sake. But the  
7       demands that the court is making of the parties in connection with sealing will help the court both  
8       to discharge its own substantive responsibilities and to better address the parties' dispute. The  
9       Ninth Circuit in *Kamakana* emphasized the importance of public access to court documents.  
10      *Kamakana*, 447 F.3d at 1178-79. The court then held that, where non-dispositive motions are  
11      concerned — as they are here — a party must make a “particularized showing” that “good cause”  
12      exists to seal the records. *Id.* at 1179-80. The good-cause standard here is that of procedural Rule  
13      26(c). *See id.* Under that rule, in this context, the court may seal documents that will expose a  
14      party to “annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P.  
15      26(c). The rule indirectly gives “trade secret[s]” as an example of material that might be protected;  
16      and, in *Kamakana*, “medical records” were found properly sealed. Fed. R. Civ. P. 26(c)(1)(G);  
17      *Kamakana*, 447 F.3d at 1186. This is not the most exacting standard in the world but it cannot be  
18      wholly ignored. Thus, when one of the parties in *Kamakana* complained that the magistrate judge  
19      had been too meticulous in analyzing its sealing request for good cause, the Ninth Circuit  
20      disagreed. *Id.* at 1186-87. “To the contrary,” the appeals court wrote,

21           we embrace the judge's decision to carefully review every document in light of the  
22           change in intervening law and in the face of the somewhat tepid and general  
23           justifications offered for sealing the documents. . . . The judge took seriously the  
24           presumption of public access and did so in accord with precedent from the Supreme  
25           Court and this court.

26      *Id.* The court upheld both the magistrate judge's searching review and her conclusions on sealing.  
27      *Id.*

28      Having the material in the form that Local Rule 79-5 requires helps the court to accurately and  
29      more speedily analyze the parties' arguments. It also helps the court ensure that it uses, discusses,

1 and cites the material in a way that is appropriate to its apparently sensitive nature.

2 The court thanks the parties for their attention to this matter.

3 **IT IS SO ORDERED.**

4 Dated: April 20, 2016



5  
6 LAUREL BEELER  
United States Magistrate Judge

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
United States District Court  
Northern District of California